

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 14, 2006

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2005AP1432

Cir. Ct. No. 2004CV30

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

GREEN LAKE STATE BANK,

PLAINTIFF-RESPONDENT,

V.

PRICE COURT, LLC,

DEFENDANT-APPELLANT,

PORTSIDE PROPERTIES, INC. AND GREEN LAKE COUNTY TREASURER,

DEFENDANTS.

APPEAL from an order of the circuit court for Green Lake County:
WILLIAM M. McMONIGAL, Judge. *Affirmed.*

Before Snyder, P.J., Brown and Anderson, JJ.

¶1 PER CURIAM. Price Court, LLC, appeals from an order confirming a sheriff's sale pursuant to a judgment of foreclosure. We conclude that the circuit court did not misuse its discretion in confirming the sale because the sale price did not shock the conscience. We further conclude that any errors relating to the court's failure to grant Price Court a recess to locate an appraiser and its ruling on hearsay evidence were harmless. We affirm.

¶2 Green Lake State Bank (the bank) foreclosed on property owned by Price Court after Price Court defaulted on its loans. The foreclosed property consisted of several vacant residential lots located in a subdivision.¹ The foreclosure sale price per lot, with adjustments for outstanding real estate taxes and assessments, was \$48,400.² The sale was duly advertised, and bidders other than the bank were present. Price Court objected to confirmation of the sheriff's sale because the bids were inadequate in relation to the value of the property.

¶3 Whether to confirm a foreclosure sale rests within the discretion of the circuit court. *Bankers Trust Co. of Cal. v. Bregant*, 2003 WI App 86, ¶10, 261 Wis. 2d 855, 661 N.W.2d 498. A court may decline to confirm a sheriff's sale if "the bid price was so inadequate so as to shock the conscience of the court." *Id.* (citation omitted). The sale price must be for fair value, as distinguished from fair market value, and is defined as "the price which a person willing and able to buy the property would reasonably pay for it, not for purposes of speculation, but for

¹ The foreclosed lots were improved with roads, utilities, and sewer and water.

² The bid price was \$280,000 and the buyer also assumed real estate taxes and assessments against the property in the amount of \$58,802, for a total paid of \$338,802, or roughly \$48,400 per lot.

that use to which it has been or reasonably may be put.” *First Wis. Nat’l Bank of Oshkosh v. KSW Invs.*, 71 Wis. 2d 359, 368, 238 N.W.2d 123 (1976).

¶4 At the confirmation hearing, the bank’s appraiser, Timothy Freudenthal, testified that he performed the August 2004 appraisal on the seven lots subject to foreclosure. He placed a market value of \$65,000 on each lot.

¶5 Price Court presented the testimony of its president, John Ammerman, who testified that the value of the lots was “higher” than the value of lots sold earlier in the project. He cited listing contracts and previous sales in excess of \$90,000 per lot. The last sale occurred in May 2002. The confirmation hearing occurred in February 2005. Ammerman conceded that the lots in foreclosure did not sell, perhaps due to marketing errors or foreclosure rumors.

¶6 Price Court also offered the testimony of a local real estate broker, Robert Schneider, who had a listing on the property subject to the foreclosure and had previously sold lots for amounts in excess of \$90,000. Schneider testified that the last two years had been very difficult for sales due to the economy. When Schneider began referring to a recent appraisal of a home in the subdivision, the bank’s counsel objected that Schneider was offering hearsay. Counsel for Price Court asked for a recess to have the appraiser come to court. The bank’s counsel objected because witnesses were supposed to be present, and Price Court’s counsel had objected earlier in the hearing to a request from the bank’s counsel for a ten-minute recess to confer with an appraiser who was present in the courtroom.

¶7 The court declined to grant Price Court a recess to locate its appraiser because the hearing had been properly noticed, and the parties were required to have their witnesses available to testify. The court then sustained the

bank's hearsay objection to any testimony by Schneider about the absent appraiser's appraisal. On cross-examination, Schneider conceded that for the three years preceding the hearing, the lots have not sold at the price for which he has listed them (in excess of \$90,000).

¶8 In evaluating the evidence and arguments, the circuit court correctly noted that it had to determine whether the sale price shocked the conscience. The court found that the lots were advertised for sale as subject to outstanding taxes and assessments and that these obligations affected the bid price. The court found that no lot had sold in the last two years, and therefore the list price and previous sales in excess of \$90,000 carried less weight. The court also noted that the downturn in the economy and the pending foreclosure action had affected the value of the lots and that there was no evidence that the lots would sell for substantially more than \$65,000 if the court ordered a new sale. The court concluded that the sale price was reasonable given the following factors: market conditions, the sale history of the lots in the subdivision, and the outstanding taxes and special assessments against the lots, which would have to be satisfied to gain marketable title to the lots. These factors reduced the value of the lots to \$48,400 each, or roughly seventy-five percent of the market value of \$65,000.

¶9 On appeal, Price Court argues that the circuit court never found a fair value for the property and did not give weight to comparable sales and other evidence of value. We disagree. The circuit court evaluated the evidence before it, as outlined above, and arrived at a fair value for the property. Price Court did not present an appraisal of its own, and the circuit court did not place weight on Price Court's evidence of previous lot sales in excess of \$90,000 and current, unsuccessful lot listings in excess of \$90,000. In addition, Price Court's listing

agent testified that the market had cooled and economic conditions were adverse, and Ammerman conceded that lot sales were not foreseeable.

¶10 The sale price at the multiple-participant sheriff's sale was "the price which a person willing and able to buy the property would reasonably pay for it." *First Wis. Nat'l Bank of Oshkosh*, 71 Wis. 2d at 368. The circuit court did not merely rubber-stamp the sale; it independently evaluated the evidence of fair value placed on the record. We conclude that the sale price did not shock the conscience, and the court did not err in confirming the sale.

¶11 Price Court urges us to find error in the circuit court's refusal to permit its listing agent, Robert Schneider, to testify about a real estate appraisal conducted by an appraiser who could not appear at the confirmation hearing. Schneider testified that he had based his opinion on value on an appraisal conducted by the absent appraiser.

¶12 The circuit court's error, if any, in excluding the appraisal, was harmless. The court had sufficient evidence before it to evaluate the fair value of the property subject to foreclosure. Additionally, the court placed greater weight on the fact that no sales had occurred in the last three years at the price Schneider was currently seeking for the property. The appraisal would not have added to the record before the court.

¶13 Finally, Price Court contends that the circuit court erred when it declined to grant it a recess to locate its appraiser to testify. This error, if any, was also harmless because the appraiser's testimony would have been more of the same testimony Price Court had already offered, i.e., that the lots had a fair value in the \$90,000 range. The circuit court was not persuaded by this evidence in light of other factors affecting fair value.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE
809.23(1)(b)5.

